

FILED

SEP 06 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

WOMACK+HAMPTON, L.L.C.

Plaintiff,

VS.

**METRIC HOLDINGS LTD.,
PARTNERSHIP,
CHILES ARCHITECTS, INC. AND
TRAMMEL CROW RESIDENTIAL
COMPANY**

Defendants.

A 01CA 59 1 JN

CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT

WOMACK+HAMPTON ARCHITECTS, L.L.C., Plaintiff, brings this action against
METRIC HOLDINGS, LTD, CHILES ARCHITECTS, INC. and TRAMMEL CROW
RESIDENTIAL, Defendants, and alleges that:

I.
PARTIES

1. Plaintiff WOMACK+HAMPTON, L.L.C. (hereinafter “WOMACK+HAMPTON”) is a corporation organized under the laws of the State of Texas with its principal place of business in Dallas, Texas.

2. Defendant, METRIC HOLDINGS, LTD. PARTNERSHIP (hereinafter “METRIC”) is a corporation organized under the laws of the State of Texas and may be served by serving its registered agent Corporation Service Company at 800 Brazos, Austin, Texas 78701.

3. Defendant CHILES ARCHITECTS, INC. (hereinafter "CHILES") is a corporation organized under the laws of the State of Texas and may be served by serving its registered agent Gary R. Chiles at 2901 Bee Cave Road, Box H, Austin, Texas 78746.

4. Defendant, TRAMMEL CROW RESIDENTIAL COMPANY (hereinafter "TCR") is a corporation organized under the laws of the State of Texas and may be served by serving its registered agent Corporation Service Company at 800 Brazos, Austin, Texas 78701.

II.

JURISDICTION AND VENUE

5. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*, and specifically the Architectural Works Copyright Protection Act, as enacted on December 1, 1990.

6. This Court has jurisdiction over the copyright claims under 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1400(a) and 1391(b) since at least one Defendant resides in this judicial district and this district is where a substantial portion of those acts giving rise to infringement occurred.

III.

BACKGROUND

8. WOMACK + HAMPTON is a corporation which has engaged and is engaged in the development of original architectural designs and plans for these designs for clients throughout the United States. WOMACK+HAMPTON is a successor in interest to Womack + Hampton Architectural Joint Venture, L.L.C. which in turn is a successor in interest to Womack+Hampton Architectural Joint Venture ("WHJV").

9. In or about 1998, WHJV developed original architectural plans for an apartment complex to be built in Houston, Texas, under the name "Windfern." In or about 1998, WHJV also developed original architectural plans for an apartment complex to be built in Dallas, Texas, under the name of "The Reserve at Cheyenne."

10. In or about 1998, Plaintiff discovered that Defendants METRIC and TCR had commissioned Defendant CHILES to copy the SUBJECT WORKS, and from the SUBJECT WORKS, METRIC and TCR had commenced to build an apartment complex in Austin by the name of "Winfern." Defendant CHILES' acts in copying the SUBJECT WORKS and Defendants TCR and METRIC's construction of the "Winfern" complex in Austin from the SUBJECT WORKS was without license or authorization from Plaintiff.

11. Plaintiff made demand upon Defendants to cease and desist their unauthorized copying and use of the SUBJECT WORKS, but Defendants refused to do so.

12. On information and belief, Defendants completed construction of the "Winfern" apartment complex in Austin in or about 1999.

13. In or about August, 2001, WOMACK + HAMPTON, as the assignee of all rights, title and interest in the copyrights in the SUBJECT WORKS, made application for registration with the United States Copyright Office. Registrations issued on these applications are attached herewith as Exhibits "A" and "B".

IV.

COUNT ONE - COPYRIGHT INFRINGEMENT

14. Plaintiff realleges each and every allegation set forth in paragraphs 1-14 above, and herein incorporates them by reference as if fully set forth at length.

15. Plaintiff did not authorize Defendants' copyrighting of the SUBJECT WORKS and further did not authorize Defendants' use of the SUBJECT WORKS to construct the "Winfern" apartment complex in Austin, as described above.

16. Copying of the SUBJECT WORKS and construction of structures incorporating the SUBJECT WORKS is a direct infringement of Plaintiff's rights under 17 U.S.C. § 101 *et seq.*

V.
COUNT TWO - INDUCEMENT TO INFRINGEMENT

17. Plaintiff realleges each and every allegation set forth in paragraphs 1-17 above, and herein incorporates them by reference as if fully set forth at length.

18. On information and belief, Defendants METRIC and TCR induced Defendant CHILES to copy the SUBJECT WORKS for use with construction of the infringing "Winfern" complex in Austin.

19. METRIC and TCR's acts as described above constitute inducement of copyright infringement.

VI.
RELIEF

20. Plaintiff is entitled to recover from Defendants its actual damages, including attorneys' fees, sustained as a result of Defendants' infringement. Plaintiff is also entitled to recover any gains, profits, and advantages obtained by Defendants as a result of their infringing acts, as described above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

21. Plaintiff is entitled to injunctive relief to prevent Defendants from engaging in further acts of infringement of the SUBJECT WORKS.

VI.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Court find that Defendants have infringed Plaintiff's copyrights in the SUBJECT WORKS.
2. That the Court find Defendants METRIC and TCR have actively induced infringement of Plaintiff's registered copyrights in the SUBJECT WORKS.
3. That Defendants, their directors, officers, agents, servants, employees, distributors, and all other persons in active concert or privity or in participation with them, be preliminarily and permanently enjoined from directly or indirectly or by any contributory manner infringing Plaintiff's registered copyrights in the SUBJECT WORKS and from continuing to market, offer, sell, dispose of, license, transfer, display, advertise, reproduce, develop, construct, or manufacture any works derived or copied from the SUBJECT WORKS or to participate or assist in any such activity.
4. That judgment be entered for Plaintiff and against Defendants for Plaintiff's actual damages.
5. That judgment be entered for Plaintiff and against Defendants for Defendants' gains, profits, and advantages derived from their acts of infringement of Plaintiff's registered copyrights in the SUBJECT WORKS pursuant to 17 U.S.C. § 504.
6. That Plaintiff have judgment against Defendants for Plaintiff's costs and attorneys' fees pursuant to 17 U.S.C. § 505.
7. That the Court grant such other, further and different relief as the Court deems proper under the circumstances.

Respectfully submitted,

SANKEY & LUCK, L.L.P.

By: 

Gregory M. Luck
State Bar No. 12666380
600 Travis Street
Suite 6200
Houston, Texas 77002
(713) 224-1007
(713) 223-7737 (Fax)

TROP, PRUNER & HU, P.C.
Timothy N. Trop
State Bar No. 20236600
8554 Katy Freeway, Suite 100
Houston, Texas 77024
(713) 468-8880
(713) 468-8883 (Fax)

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues triable to a jury.

Respectfully submitted,

SANKEY & LUCK, L.L.P.

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(713) 468-8883 (Fax)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

RI

VA 1-088-511



ARPA 1889511

EFFECTIVE DATE OF REGISTRATION

08 03 2001
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

Reserve at Cheyenne
First building completed: May 1999; Project completed: September 1999

NATURE OF THIS WORK ▼ See instructions

Architectural Work

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 NAME OF AUTHOR ▼

Womack+Hampton Architectural Joint Venture, employer of Charles R.
Womack and R. Michael Hampton

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire?"

☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of United States
Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No
Pseudonym? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☒ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire?"

☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of
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☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
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☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 Year In Which Creation of This Work Was Completed

1998 Year

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month May Day 31 Year 1999

United States Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Womack+Hampton Architects, L.L.C.

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

By Assignment

APPLICATION RECEIVED
AUG 03 2001

ONE DEPOSIT RECEIVED
AUG 03 2001

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page
- See detailed instructions.
- Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

3

4

See instructions before completing this space.

* Added by CO per authority granted by Matt Waldrop,
of Sankey & Luck, L.L.P., in conversation August
9, 2001.

EXAMINED BY *JAF*

FORM VA

CHECKED BY

☐ CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a. ☐ This is the first published edition of a work previously registered in unpublished form
b. ☐ This is the first application submitted by this author as copyright claimant.
c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

- 1.) Windfern
2.) Reserve at Willowlake - leasing office/clubhouse only

See instructions
before completing
this space.

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed ▼

The present plans use brick and stucco elevation materials, a 2-story building configuration, and revised floorplans. The revised floorplans add bathrooms and fireplaces, and relocate closets and washer-dryers. Unit "C2" of this plan is an entirely new unit plan not derived from any previous work.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Sankey & Luck, L.L.P.
Care of Greg Luck
6200 Chase Tower, 600 Travis
Houston, Texas 77002

Area code and daytime telephone number ► (713) 224-1007

Fax number ► (713) 223-7737

Email ► gluck@sankeyluck.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ►

- ☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)

☒ authorized agent of Womack+Hampton Architects, L.L.C.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Gregory M. Luck, Sankey & Luck, L.L.P.

Date ► 8/1/01

Handwritten signature (X) ▼

X

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼
Sankey & Luck, L.L.P.

Number/Street/Apt ▼

6200 Chase Tower, 600 Travis

City/State/ZIP ▼

Houston, Texas 77002

YOU MUST

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE**

1. Application form
2. Nonrefundable filing fee in check or money As of July 1, 1999, the filing fee for Form VA is \$30.
3. Deposit material

MAIL TO

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1992—100,000
WEB REV: June 1999

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/71



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 REGISTER OF COPYRIGHTS
 United States of America

FORM VA
 For a Work of the Visual Arts
 UNITED STATES COPYRIGHT OFFICE

VA 1-089-750

EFFECTIVE DATE OF REGISTRATION

08 09 2001
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

Windfern

First building completed: March 1999; Project completed: October 1999

NATURE OF THIS WORK ▼ See instructions

Architectural Work

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

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NAME OF AUTHOR ▼

Womack+Hampton Architectural Joint Venture, employer of Charles R.

a Womack and R. Michael Hampton

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☒ Yes

☐ No

Author's Nationality or Domicile

Name of Country

OR Citizen of ► United States

Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☒ Architectural work

NAME OF AUTHOR ▼

b

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☐ No

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Name of Country

OR Citizen of ►

Domiciled in ►

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☐ Architectural work

3

Year in Which Creation of This Work Was Completed

a 1998

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

b Complete this information ONLY if this work has been published.

Month ► March Day ► * 31 Year ► 1999 (est.)

United States

4

See instructions before completing this space.

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MORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
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DO NOT WRITE HERE
 Page 1 of 2 pages

* Added by CO per authority granted by Matt Waldrop,
authorized agent of Sankey & Luck, L.L.P., in
conversation August 17, 2001.

EXAMINED BY JWJ

FORM VA

CHECKED BY _____

☐ CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

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Care of Greg Luck
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Fax number ► (713) 223-7737

Email ► gluck@sankeyluck.com

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check only one ►

☐ author

☐ other copyright claimant

☐ owner of exclusive right(s)

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Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

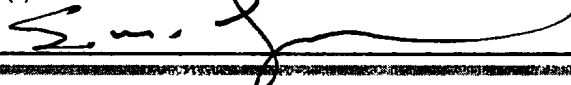
Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Gregory M. Luck, Sankey & Luck, L.L.P.

Date ►

8/8/01

Handwritten signature (X) ▼

X 

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼
Sankey & Luck, L.L.P.
Number/Street/Apt ▼
6200 Chase Tower, 600 Travis
City/State/ZIP ▼
Houston, Texas 77002

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

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3. Deposit material

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June 1999—100,000
WEB REV: June 1999

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U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/71